

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012110608

ORDER GRANTING IN PART AND
DENYING MOTION TO STRIKE

On November 16, 2012, Student filed a Request for Due Process Hearing (complaint) stating nine issues and seven proposed resolutions. The proposed resolutions included a request for attorney fees. On November 27, 2012, Fresno Unified School District (District) filed an Answer to Request for Due Process Hearing and Motion to Strike. District moves to strike, specifically, page four, line 11 to page six, line 17, on the grounds the allegations relate to claims beyond the statute of limitations, and page 21, line 7 through line eight, on the grounds OAH does not have jurisdiction to award attorney fees to parents. No opposition has been filed. As discussed below, the motion to strike particular allegations as beyond statute of limitation is denied, the motion is granted as to the request for attorney fees.

APPLICABLE LAW

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There are no provisions governing a motion to strike in special education hearings. Therefore, OAH looks to the California Code of Civil Procedure for guidance. Section 436 authorizes a court to strike “any irrelevant, false, or improper material inserted in any pleading . . . or any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court.” Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc. . . .), special education law does not provide for a summary judgment procedure.

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. §

1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

An award of reasonable attorney's fees to the prevailing parent, guardian, or pupil, as the case may be, may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction. (Ed. Code, § 56507, subd. (b)(1).) Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided, which can be a factor in determining attorney fees.

DISCUSSION

District contends the complaint contains allegations that are time-barred by the two-year statute of limitations. The allegations District seeks to strike include factual background and allegations District may have made misrepresentations concerning the provision of a free appropriate public education (FAPE) to Student and that District failed to disclose information as to Student's progress. These allegations are sufficient to raise a factual issue as to the applicability of the statutory exceptions to the statute of limitations. District fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication on the statute of limitations without giving the petitioner the opportunity to develop a factual record regarding the exceptions, if any. Accordingly, District's motion to strike allegations outside the statute of limitations is denied.

However, absent an agreement from the District to award fees, which is not forthcoming given the filing of the motion, the request for attorney's fees is facially outside OAH jurisdiction and is therefore subject to dismissal. OAH is not a court of competent jurisdiction for the purposes of Education Code section 56507. This order is without prejudice to Student seeking attorney's fees in a court with jurisdiction to grant them.

ORDER

1. The motion to strike page four, line 11 to page six, line 17 of Student's complaint is denied.
2. The motion to strike Student's claim for attorneys' fees is granted, without prejudice to Student seeking those fees in a court with jurisdiction to grant them.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: November 30, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings